

United States

713 Circuit Court of Appeals

For the Ninth Circuit. /

ISOJIRO KITAGAWA,

Appellant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,

Appellees.

Transcript of Record.

Upon Appeal from the Supreme Court of the Territory of
Hawaii.

FILED

JUN 15 1931

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Amended Bill of Complaint, Complainant's (No. 203)	15
Argument on Demurrer (No. 203)	32
Assignments of Error (No. 1974)	61
Bill of Complaint, Complainant's (No. 203)..	1
Bond of Complainant for Costs to Accrue on Appeal (No. 203)	37
Bond on Appeal (No. 1974)	72
Certificate of the Clerk of the Supreme Court of the Territory of Hawaii to the Tran- script of Record on Appeal (No. 1974)...	74
Citation on Appeal (No. 1974)	68
Complainant's Amended Bill of Complaint (No. 203)	15
Complainant's Bill of Complaint (No. 203)...	1
Decree on Appeal (No. 1974)	58
Decree Sustaining Respondents' Demurrer to Complainant's Amended Bill of Complaint (No. 203)	28
Demurrer to Complainant's Amended Bill of Complaint, Respondents' (No. 203).....	26

Index.	Page
Demurrer to Complainant's Bill of Complaint, Respondents' (No. 203)	11
Hearing on Demurrer (No. 203)	30
Minutes of Court—April 21, 1930—Hearing on Demurrer (No. 203)	30
Minutes of Court—April 26, 1930—Order Amending Complaint (No. 203)	31
Minutes of Court—April 29, 1930—Argument on Demurrer (No. 203)	32
Minutes of Court—May 22, 1930—Motion to Strike Amended Bill of Complaint (No. 203)	33
Minutes of Court—May 23, 1930—Ruling on Motion to Dismiss and Strike Complain- ant's Bill of Complaint (No. 203)	34
Minutes of Court—May 24, 1930—Order Grant- ing Motion to File Amended Bill of Com- plaint (No. 203)	35
Minutes of Court—June 24, 1930—Order De- nying Motion to Submit and Strike (No. 203)	36
Minutes of Court—July 28, 1930—Order Sub- mitting Demurrer to Complainant's Amended Bill of Complaint (No. 203)....	36
Motion for Leave to File Amended Bill of Complaint (No. 203)	15
Motion to Strike Amended Bill of Complaint (No. 203)	33
Notice of Appeal and Appeal (No. 203)	29
Opinion of the Supreme Court (Nos. 1974, 1975)	39

Index.	Page
Order Allowing Appeal and Fixing Amount of Bond (No. 1974)	67
Order Amending Complaint (No. 203)	31
Order Denying Motion to Submit and Strike (No. 203)	36
Order Enlarging Time to and Including May 16, 1931, to Prepare and Transmit Record on Appeal and Docket Cause (No. 1974) ..	71
Order Granting Motion to File Amended Bill of Complaint (No. 203)	35
Order Submitting Demurrer to Complainant's Amended Bill of Complaint (No. 203)....	36
Petition for Appeal (No. 1974)	59
Praecipe for Transcript of Record on Appeal to the United States Circuit Court of Ap- peals for the Ninth Circuit (No. 1974)....	69
Respondents' Demurrer to Complainant's Amended Bill of Complaint (No. 203)....	26
Respondents' Demurrer to Complainant's Bill of Complaint (No. 203)	11
Ruling on Demurrer to Amended Bill of Com- plaint (No. 203)	27
Ruling on Motion to Dismiss and Strike Com- plainant's Bill of Complaint (No. 203)....	34
Ruling on Respondents' Demurrer (No. 203)..	13

Filed at 11:10 o'clock A. M., Mar. 28, 1930.

In the Circuit Court of the Fourth Circuit, Territory of Hawaii.

AT CHAMBERS—IN EQUITY.

Suit for Injunction Against Performance of Illegal Tax and Other Equitable Relief.

ISHIJIRO KITAGAWA,

Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and COUNTY OF HAWAII,

Respondents.

COMPLAINANT'S BILL OF COMPLAINT.

To the Honorable HOMER L. ROSS, Judge of the Circuit Court of the Fourth Judicial Circuit:

The bill of complaint of Isojiro Kitagawa respectfully shows:

1.

That Isojiro Kitagawa, named herein as complainant, is now residing at Hilo, in the County and Territory of Hawaii; that Oliver T. Shipman, one of the respondents herein named, is now residing permanently in said Hilo, and that he is now and at all times hereinafter mentioned has been the lawfully elected, qualified and acting Treasurer of the County of Hawaii; and that the County of Hawaii, herein named as respondent, is a body politic and corporate, organized and existing under and by virtue of the laws of the Territory of Hawaii,

as provided by Chapter 116 of the Revised Laws of the Territory of Hawaii, 1925, as amended.

2.

That the complainant is principally engaged at said Hilo in the business of buying and selling motor vehicles, equipment, fuel and lubricating oils, and in conducting a [1*] repair-shop; and as a part of his necessary equipment and stock in trade the complainant has on hand and is the owner of sixteen second-hand motor vehicles, which motor vehicles are deposited in his stock and sales room, and are not used upon the public highway in the County of Hawaii.

3.

That the Territory of Hawaii, by its Act duly passed by the Legislature of the Territory of Hawaii and duly enacted as provided by the Organic Act of the Territory of Hawaii, and approved by the Governor of the Territory of Hawaii, as more fully set forth in the Revised Laws of the Territory of Hawaii 1925, in Section 1306 and following, and as amended by the Legislature of the Territory of Hawaii at its session of 1927, by an Act duly approved by the Governor, and which is known as Act number 172 of the Session Laws of 1927, which Act is now alleged to be in full force and effect, except as amended by Acts 180 and 246 of the said Legislature and both approved by the Governor April 29th, 1925; and as again amended by an Act of the said Legislature approved by the Governor

*Page-number appearing at the foot of page of original certified Transcript of Record.

April 26th, 1927, all of which Acts have not been repealed by any Act of the Legislature, and by all of said Laws and Acts the said Legislature has attempted to provide by law that all owners of automobiles and other power driven vehicles shall pay to the Treasurer of the County in which the owner lives and operates his said motor vehicle, on all such motor vehicles owned by him, a property tax computed by weighing the car, together with its equipment and accessories, and also its water and fuel, and assessing each said car at one cent (1¢) per pound of the weight so found; and said tax, by the said several Acts of the Legislature, is due and [2] payable to the Treasurer of the County on January 1st of each year, and shall become delinquent on March 1st thereafter. And it is further provided by said Laws and Acts, that any motor vehicle on which the tax so levied by weight shall be unpaid on the date when the same becomes delinquent as provided by law, may be seized by the Treasurer, his Deputy, or by any Sheriff, Deputy Sheriff or any Police Officer of the County wherein the car is owned and registered, or by any person acting for any of the said officers; and being so seized such car shall be held for a period of ten days, during which term such vehicle so held may be redeemed by the owner by the payment by the said owner of the said taxes so levied and assessed as aforesaid, together with a penalty of One Dollar (\$1.00) for each vehicle and also all costs of storage and other charges incident to the seizure. Having seized the said vehicle, the Treasurer of the County

or those acting for him, may sell the same at public auction to the highest bidder, after giving public notice of such sale. And the taxes so levied and assessed, together with all penalties, are required by said laws to be retained by the County, through its Treasurer, as a county realization, and such money so collected and kept becomes a part of the general funds of the county for the purpose of paying for the general expenses of county government, as appropriated from time to time by the Board of Supervisors of the County.

4.

That the complainant, in pursuit of his business and calling, as aforesaid, has become the owner of, and has as a part of his stock in trade and in his possession in the County of Hawaii, for sale, sixteen (16) motor vehicles [3] of the kind described in the said Laws and Acts, which sixteen motor vehicles are of the aggregate value of \$5,600.00; but such value as the same shall be apportioned to the several cars according to the actual value of each, is shown in Schedule A attached to this bill of complaint and made a part hereof, the respective values of the said several vehicles varying with and depending on the make, size, equipment, length of time in use, condition of engines, bodies and other equipment, and having no relation whatsoever to the weight thereof; that the aggregate weight of said cars, together with the equipment, water and fuel, is 32,000 pounds, and by the terms of said Laws and Acts there would be payable to

the Treasurer of the County of Hawaii, as a county realization, the sum of Three Hundred Twenty Dollars (\$320.00) as of January 1st, 1930, which said tax the complainant has refused to pay on the ground that the same is illegal; and thereafter, on March 1st, 1930, there would have accrued under the said Laws and Acts, as penalty, the further sum of \$16; and the sum of said two amounts, being \$336.00, is now demanded by the Treasurer of the County of Hawaii of this complainant; and the said Treasurer, acting by himself and through the County of Hawaii, and the officers hereinbefore mentioned and referred to, now claims to be entitled and threatens to seize the said sixteen motor vehicles so owned by the complainant under and by virtue of the said Laws and Acts of the Territory of Hawaii; and said Treasurer, and said other officers, all of whom are elected in the County of Hawaii, or are appointed by the Board of Supervisors of the County of Hawaii, will unlawfully and with force seize and take away from the possession of the complainant all or some of the [4] said sixteen motor vehicles, and will store the same, and after giving public notice as required by said Laws and Acts, will sell the said motor vehicles at public auction unless restrained by order of this Court.

5.

That all of said Laws and Acts so passed by the Legislature of the Territory of Hawaii are an attempt to provide for a property tax to be levied upon and taxed against the said sixteen motor vehicles, and to be paid by this complainant, which

tax when collected and has become a county realization will be expended by the County of Hawaii for the purpose of maintaining the government of the County of Hawaii, and such said Acts and Laws are void and of no force for the following reasons:

I. That the tax assessed and attempted to be assessed under the terms of the said Laws and Acts against the said motor vehicles so owned by the complainant and payable by the complainant is not assessed according to the value of the said several motor vehicles but according to the weight, and in the case of each vehicle is arbitrary and entirely disproportionate to the real value of the vehicles; and for these reasons the complainant, if he is required to pay said tax will be required to pay a larger tax upon automobiles of slight value than other car owners and dealers similarly situated are required to pay upon automobiles of great value, and will pay for and contribute to the County of Hawaii an undue, and, when compared with the amounts contributed by other taxpayers in the County of Hawaii similarly situated, an excessive amount and portion of the revenue required to be raised for the support and maintenance of the Government of the County of Hawaii, and an amount entirely disproportionate [5] to the amount and value of his property as compared with the property of other residents within the County of Hawaii; and the said assessment so made and provided is relatively out of proportion to the taxable value of other species of property owned by other persons residing and owning property in said County of

Hawaii; and complainant is thereby deprived of the equal protection of the laws as granted him by the Constitution of the United States of America as the same is found in amendments numbered V and XIV.

II. That such alleged tax so levied and assessed as aforesaid, if the same shall be taken from the complainant, will be and is a taking from him of his property without due process of law, contrary to his rights as guaranteed to him by the Constitution of the United States of America, Amendments V and XIV.

6.

That complainant will lose all of his property right and property in the said sixteen cars if the same shall be taken from him as it is now threatened by the respondents, and he will suffer great and irreparable loss and injury by reason of the taking of said property from him and the storing of the same for the period as required by said invalid laws, and the sale thereof at auction, by which sale the amounts received by the said respondents will be greatly disproportionate to the real value, because of the fact that the sale of vehicles under such circumstances by the method provided by said Laws and Acts, to wit, at public auction, will cause said property so sold to bring at such public sale only a fractional portion of the value which the said several vehicles have, and which would be received by the complainant if the same were sold in the regular [6] course of business.

7.

That complainant is entirely remediless in the premises at common law because of the strictness of the rules of the common law, and unless he shall have his remedy in equity, where matters of that sort are properly considered and remedied, he will suffer great and irreparable loss.

8.

That the respondents are now about to seize the said sixteen motor vehicles as they claim they have a right to do under the said Laws and Acts, and will seize, store and sell the same at public auction unless they shall be restrained by the temporary order and injunction of this Court.

WHEREFORE the complainant prays that there shall issue out of this Court and under the seal thereof several subpoenas requiring the said respondents to appear in this court within ten days from the time of service, then and there to answer unto the complainant respecting the several matters set out in his bill of complaint; and that pending the further hearing of this cause the said respondents shall be temporarily restrained from acting under the invalid laws aforesaid, as they now threaten to do; and that upon the final hearing hereof, the respondents, and each of them, shall be perpetually enjoined against collecting or attempting to collect from the complainant any or all taxes levied or assessed, or attempted to be levied or assessed, under or by virtue of said Section 1306 of the Revised Laws of the Territory of Hawaii, 1925, and all

amendments thereto; and for costs and for such other and further relief as to the Court may seem meet.

ISOJIRO KITAGAWA,
By CARL S. CARLSMITH,
His Attorney. [7]

AMENDMENT TO BILL.

That the complainant, in accordance with his usual course of business, has offered for sale and will hereafter continue to offer for sale the said sixteen motor vehicles, and that the same are of value to him only when they can be readily sold in the regular course of business; that purchasers of cars generally, and those members of the public who would become purchasers of the said sixteen cars, are fully advised as to the law hereinbefore more particularly set forth and referred to, and such purchasers know that any car belonging to the complainant and which is a part of the said stock of sixteen cars, which car has not paid the weight tax for the year 1930, is liable to seizure by the respondents and by the officers of the County of Hawaii; and for this reason no person will purchase any of the said sixteen cars in the regular course of business, and the complainant will thereby suffer irreparable damage by reason of his inability to sell any of said cars; and the said cars so remaining unsold in the possession of the complainant will depreciate in value with the lapse of time, and such loss of sale and such depreciation in value cannot by any means be determined, and the loss and

injury suffered by the complainant cannot be fixed in terms of money value; and that by reason of the aforesaid facts the complainant will suffer irreparable loss and injury, all due to the said illegal tax and the acts and threats of the respondents connected therewith. [8]

Territory of Hawaii,
Fourth Judicial Circuit,—ss.

M. Nakamura, being first duly sworn, says upon his oath that he is the manager of the complainant above named; that he has read the foregoing bill of complaint, knows the contents thereof, and that the same is true.

(Sgd.) M. NAKAMURA.

Subscribed and sworn to before me this 28th day of March, A. D. 1930.

[Seal]

(Sgd.) W. W. AHUNA,
Asst. Clerk. [9]

SCHEDULE "A."

ENGINE NUMBER. MODEL AND MAKE.

429374	Star Touring
407802	Star Touring
425312	Star Touring
425326	Star Touring
381721	Star Touring
462501	Star Coupe
414740	Star Express
555895	Durant Touring
12737102	Ford Touring
12843835	Ford Touring
14034059	Ford Touring
456778	Star Express
190411	Star Touring
14145754	Star Sedan
255971	Star Touring
208779	Star Touring
11606863	Ford Truck
3024397	Ford Bus

[10]

Filed at 10:10 o'clock A. M., Apr. 12, 1930. [11]

[Title of Court and Cause—No. 203.]

RESPONDENTS' DEMURRER TO COM-
PLAINANT'S BILL OF COMPLAINT.

Comes now Oliver T. Shipman, Treasurer of the County of Hawaii, and the County of Hawaii, respondents in the above-entitled cause, and demur to

the complainant's bill of complaint upon the following grounds:

1. That the complainant has not in and by his bill of complaint made or stated facts sufficient to entitle him to any relief prayed for in his said bill of complaint.

2. That the said complainant is not entitled to relief in a court of equity, for the reason, he has a full, complete and adequated remedy at law.

3. That the purposes for which the taxes levied and assessed as alleged in complainant's bill of complaint is not in accordance, with and as provided, by the laws of the Territory of Hawaii.

Dated at Hilo, Hawaii, this 12th day of April, A. D. 1930.

O. T. SHIPMAN,
Treasurer of the County of Hawaii, and
THE COUNTY OF HAWAII,

Respondents.

By (Sgd.) W. H. BEERS,
County Attorney, County of Hawaii, and Deputy
Attorney General, T. H. [12]

I, W. H. Beers, County Attorney of the County of Hawaii, and Deputy Attorney General, acting for and on behalf of the respondents, hereby certify that the foregoing demurrer is made and filed in good faith and is not interposed for the purpose of delay.

(Sgd.) W. H. BEERS.

Service accepted.

(Sgd.) CARL S. CARLSMITH.
April 12, 1930. [13]

Filed at 11:20 o'clock A. M., May 10, 1930. [14]

[Title of Court and Cause—No. 203.]

RULING ON RESPONDENTS' DEMURRER.

The Territory under the Organic Act has full power to levy taxes, and the only limitation on this power is that the taxes levied must not conflict with the Constitution of the United States, nor the Acts of Congress. No Act of Congress is involved, but the tax is alleged to be in conflict with the V and XIV Amendments.

Pursuant to this inherent power the legislature may classify property for the purposes of taxation, the classifications, however, must not be unreasonable or arbitrary. The legislature has made a classification of automobiles and provided for a specific tax on them based on their weight. Such a classification is reasonable and not arbitrary when we take into consideration how automobiles used on the public highways destroy the roads and require the expenditure of large sums of public money to build and maintain them; and how additional expense for police regulation is required in directing and supervising motor traffic. In determining the amount of the tax by the weight of the motor vehicle equipped with fuel and water the legislature undoubtedly had in mind that this was a more reasonable and just rule than to base the tax on the value of the motor [15] vehicle, for a motor vehicle's weight and not its value is the factor involved

in the wear and tear of the public highways. In any event, this was a question for the legislature to determine and not the courts.

The Constitution does not prescribe how a tax shall be imposed on property, what classification of property for the purposes of taxation shall be made, now what the bases of assessment of property for taxation shall be, so long as the plan and procedure adopted by the legislature does not violate the Constitution. The tax imposed under Section 1306, R. L. 1925, as amended, satisfies all these requirements and does not violate the Constitution of the United States.

von Hamm-Young Co. vs. Long, 30 Haw. 260.

Honolulu R. T. Co. vs. Wilder, 30 Haw. 685.

Allen vs. Smith, 95 N. E. 829.

Jasnowski vs. Dilworth, 157 N. W. 891.

Union Trust Co. vs. Common Council, 137
N. W. 122.

People vs. Coleman, 25 N. E. 51.

Brown-Forman Co. vs. Kentucky, 217 U. S.
563.

Kane vs. State, L. R. A. 1917B, 553.

Bridewell vs. Henderson, 195 Pac. 575.

Comas Stage Co. vs. Kozer, 209 Pac. 95.

Hendrick vs. State of Maryland, 235 U. S.
610.

State vs. Peterson, 198 N. W. 1011.

Raymond vs. Holm, 206 N. W. 166.

Ex Parte Schuler, 139 Pac. 685.

The Ohio Oil Co. vs. E. A. Conway, —
U. S. —, decided April 14, 1930.

The demurrer is sustained on the first ground, and no ruling is made on the other grounds.

The bill is dismissed at complainant's cost.

May 10th, 1930.

[Seal] (Sgd.) HOMER L. ROSS,
Judge. [16]

Filed at 9 o'clock A. M., May 24, 1930. [17]

[Title of Court and Cause—No. 203.]

MOTION FOR LEAVE TO FILE AMENDED
BILL OF COMPLAINT.

Comes now the complainant above named, and moves that leave be given to him to file an amended bill of complaint in the above-entitled cause within a time to be fixed by court.

This motion is based upon the records and files in this cause.

I. KITAGAWA.

By (Sgd.) CARL S. CARLSMITH,
His Attorney. [18]

Filed at 11 o'clock A. M., May 28, 1930. [19]

[Title of Court and Cause—No. 203.]

COMPLAINANT'S AMENDED BILL OF COM-
PLAINT.

To the Honorable HOMER L. ROSS, Judge of the
Circuit Court of the Fourth Judicial Circuit:
Comes now the complainant above named, and

with leave of Court first had and obtained, files this, his amended bill of complaint, and says:

1.

That Isojiro Kitagawa, named herein as complainant is now residing at Hilo in the County and Territory of Hawaii; that Oliver T. Shipman, one of the respondents herein named, is now residing permanently in said Hilo, and that he is now and at all times hereinafter mentioned has been the lawfully elected, qualified and acting Treasurer of the County of Hawaii; and that the County of Hawaii, herein named as respondent, is a body politic and corporate, organized and existing under and by virtue of the laws of the Territory of Hawaii, [20] as provided by Chapter 116 of the Revised Laws of the Territory of Hawaii, 1925, as amended.

2.

That the complainant is principally engaged at said Hilo in the business of buying and selling motor vehicles, equipment, fuel and lubricating oils, and in conducting a repair-shop; and as a part of his necessary equipment and stock in trade the complainant has on hand and is the owner of eighteen second-hand motor vehicles, which motor vehicles are deposited in his stock and sales room, and are not used upon the public highways in the County of Hawaii.

3.

That the Territory of Hawaii, by its Act duly passed by the Legislature of the Territory of Hawaii and duly enacted as provided by the Organic

Act of the Territory of Hawaii, and approved by the Governor of the Territory of Hawaii, as more fully set forth in the Revised Laws of the Territory of Hawaii 1925, in Section 1306 and following, and as amended by the Legislature of the Territory of Hawaii at its session of 1927, by an Act duly approved by the Governor, and which is known as Act Number 172 of the Session Laws of 1927, which Act is now alleged to be in full force and effect, except as amended by Acts 180 and 246 of the said Legislature and both approved by the Governor April 29th, 1925; and as again amended by an Act of the said Legislature approved by the Governor April 26th, 1927; all of which Acts have not been repealed by any Act of the Legislature, and by all of said Laws and Acts the said Legislature has attempted to provide by law that all owners of automobiles and other power driven vehicles shall pay to the Treasurer of the County in which the owner lives [21] and operates his said motor vehicle, on all such motor vehicles owned by him, a property tax computed by weighing the car, together with its equipment and accessories, and also its water and fuel, and assessing each said car at one cent (1¢) per pound of the weight so found; and said tax by the said several Acts of the Legislature, is due and payable to the Treasurer of the County on January 1st of each year, and shall become delinquent on March 1st thereafter. And it is further provided by said Laws and Acts, that any motor vehicle on which the tax so levied by weight shall be unpaid on the date when the same becomes delinquent as pro-

vided by law, may be seized by the Treasurer, his Deputy, or by any Sheriff, Deputy Sheriff or any Police Officer of the County wherein the car is owned and registered, or by any person acting for any of the said officers; and being so seized such car shall be held for a period of ten days, during which term such vehicle so held may be redeemed by the owner by the payment by the said owner of the said taxes so levied and assessed as aforesaid, together with a penalty of One Dollar (\$1.00) for each vehicle and also all costs of storage and other charges incident to the seizure. Having seized the said vehicle, the Treasurer of the County or those acting for him, may sell the same at public auction to the highest bidder, after giving public notice of such sale. And the taxes so levied and assessed, together with all penalties, are required by said laws to be retained by the County, through its Treasurer, as a county realization.

4.

That the complainant, in pursuit of his business and calling, as aforesaid, has become the owner of, and has as a part of his stock in trade and in his possession in the [22] County of Hawaii for sale, eighteen (18) motor vehicles of the kind described in the said Laws and Acts, which eighteen motor vehicles are of the aggregate value of \$5,600.00; the respective values of the said several vehicles varying with and depending on the make, size, equipment, length of time in use, condition of engines, bodies and other equipment, and having no relation whatsoever to the weight thereof; that

the aggregate weight of said cars, together with the equipment, water and fuel, is 32,000 pounds, and by the terms of said Laws and Acts there would be payable to the Treasurer of the County of Hawaii, as a county realization, the sum of Three Hundred Twenty Dollars (\$320.00) as of January 1st, 1930, which said tax the complainant has refused to pay on the ground that the same is illegal; and thereafter, on March 1st, 1930, there would have accrued under the said Laws and Acts, as penalty, the further sum of \$18; that the sum of the two amounts being \$338.00 is now claimed to be due the County of Hawaii; that the Treasurer of the County of Hawaii, acting by himself and through the County of Hawaii and the officers hereinbefore mentioned, has publicly announced that the County of Hawaii is entitled to the payment by the owners of one cent (1¢) per pound tax by weight on every motor vehicle in the said County, however owned or however used, and he has threatened to seize all such motor vehicles upon which the said tax of one cent (1¢) per pound has not been paid under and by virtue of the said Laws and Acts of the Territory of Hawaii hereinabove set forth; and said Treasurer, and said other officers, all of [23] whom are elected in the County of Hawaii, or are appointed by the Board of Supervisors of the County of Hawaii, intend to and will, unless restrained by the injunction of this Court, unlawfully and with force seize, take and carry away from out of the possession of the complainant all of the said eighteen motor vehicles, and will store the same, and after giving public

notice as required by said Laws and Acts, will sell the said motor vehicles at public auction.

5.

That all of said Laws and Acts so passed by the Legislature of the Territory of Hawaii, are an attempt to provide for a property tax to be levied upon and taxed against the said eighteen motor vehicles, and such said Acts and Laws are void and of no force for the following reasons:

That the tax assessed and attempted to be assessed under the terms of the said Laws and Acts against the said motor vehicles so owned by the complainant and payable by the complainant, is not assessed according to the value of the said several motor vehicles but according to the weight, and in the case of each vehicle is arbitrary and entirely disproportionate to the real value of the vehicle; and for these reasons the complainant, if he is required to pay said tax will be required to pay a larger tax upon automobiles of slight value than other car owners and dealers similarly situated are required to pay upon automobiles of great value, and will pay for and contribute to the County of Hawaii an undue, and, when compared with the amounts contributed by other taxpayers in the County of Hawaii similarly situated, [24] an excessive amount and portion of the revenue required to be raised for the support and maintenance of the Government of the County of Hawaii, and an amount entirely disproportionate to the amount and value of his property as compared with the property of other residents within the County of Hawaii; and the

said assessment so made and provided is relatively out of proportion to the taxable value of other species of property owned by other persons residing and owning property in said County of Hawaii; and complainant is thereby deprived of the equal protection of the laws as granted him by the Constitution of the United States of America as the same is found in amendments numbered V and XIV.

6.

That the said tax assessed and attempted to be assessed under the terms of the said Laws and Acts against said motor vehicles is assessed upon all motor vehicles whether or not they use the roads or highways of the County or Territory of Hawaii, and if the complainant is required to pay the said taxes, he will be required to pay for the use of the roads or highways by the said eighteen automobiles which are not now upon the roads or highways, and are not intended to be used upon the roads or highways during the year 1930; that the complainant is thereby deprived of the equal protection of the laws as granted him by the Constitution of the United States of America, amendments V and XIV.

7.

That such alleged tax so levied and assessed as aforesaid, if the same shall be collected from the complainant as aforesaid, will be and is a taking from him of his property [25] without due process of law, contrary to his rights as guaranteed to him by the Constitution of the United States of America, amendments V and XIV.

8.

That complainant further shows unto your Honor that he will lose all of his property rights and property in the said eighteen cars if the same shall be taken from him as now threatened by said respondents and he will suffer great and irreparable loss and injury by reason of the taking of said property from him and the storing of the same for the period as required by said invalid laws, and the sale thereof at auction, by which sale the amounts received by the said respondents will be greatly disproportionate to the real value, because of the fact that the sale of vehicles under such circumstances by the method provided by said Laws and Acts, to wit, at public auction, will cause said property so sold to bring at such public sale only a small part of the value which the said several vehicles have, and which would be received by the complainant if the same were sold in the regular course of business; that the complainant, in accordance with his usual course of business, has offered for sale and will hereafter continue to offer for sale the said eighteen motor vehicles, and that the same are of value to him only when they can be readily sold in the regular course of business; that purchasers of cars generally, and those members of the public who would become purchasers of the said eighteen cars, are fully advised as to the law hereinbefore more particularly set forth and referred to, and as to the claims and threats of the Treasurer acting by himself and through the County of Hawaii and the officers hereinbefore [26] mentioned, and such pur-

chasers know that any car belonging to the complainant and which car is a part of the said stock of eighteen cars, which car has not paid the weight tax for the year 1930, is liable to seizure by the respondents and by the officers of the County of Hawaii; and for this reason no person will purchase any of the said eighteen cars in the regular course of business, and the complainant will thereby suffer irreparable damage by reason of his inability to sell any of said cars; and the said cars so remaining unsold in the possession of the complainant will depreciate in value with the lapse of time, and such loss of sale and such depreciation in value cannot by any means be now determined, and the loss and injury suffered and which will be suffered by the complainant cannot be fixed in terms of money value; and that by reason of the aforesaid facts the complainant will suffer irreparable loss and injury, all due to the said illegal tax and acts and threats of the respondents connected therewith.

9.

That complainant is entirely remediless in the premises at common law because of the strictness of the rules of the common law, and unless he shall have his remedy in equity, where matters of that sort are properly considered and remedied, he will suffer great and irreparable loss.

10.

That the respondents are now about to seize the said eighteen motor vehicles as they claim they have a right to do under the said Laws and Acts, and

will seize, store and sell the same at public auction unless they shall be restrained by the temporary order and injunction of this court. [27]

WHEREFORE the complainant prays that there shall issue out of this court and under the seal thereof several subpoenas requiring the said respondents to appear in this court within ten days from the time of service, then and there to answer unto the complainant respecting the several matters set out in his amended bill of complaint; and that pending the further hearing of this cause the said respondents shall be temporarily restrained from acting under the invalid laws aforesaid, as they now threaten to do; and that upon the final hearing hereof, the respondents, and each of them, shall be perpetually enjoined against collecting or attempting to collect from the complainant any or all taxes levied or assessed, or attempted to be levied or assessed under or by virtue of said Section 1306 of the Revised Laws of the Territory of Hawaii, 1925, and all amendments thereto; and for costs and for such other and further relief as to the Court may seem meet.

ISOJIRO KITAGAWA,

Complainant.

By CARL S. CARLSMITH,

His Attorney.

Territory of Hawaii,
Fourth Judicial Circuit,—ss.

M. Nakamura, being first duly sworn, says upon his oath that he is the manager of the complainant above named; that he has read the foregoing

amended bill of complaint, knows the contents thereof, and that the same is true.

(Sgd.) M. NAKAMURA.

Subscribed and sworn to before me on this 28th day of May, A. D. 1930.

[Seal] (Sgd.) C. WENDELL CARLSMITH.

[28]

SCHEDULE "A."

ENGINE NUMBER. MODEL AND MAKE.

429374	Star Touring
407802	Star Touring
425312	Star Touring
425326	Star Touring
381721	Star Touring
462501	Star Coupe
414740	Star Express
555895	Durant Touring
12737102	Ford Touring
12843835	Ford Touring
14034059	Ford Touring
456778	Star Express
190411	Star Touring
14145754	Star Sedan
255971	Star Touring
208779	Star Touring
11606863	Ford Truck
3024397	Ford Bus [29]

Filed at 4 P. M., June 23, 1930.

[Title of Court and Cause—No. 203.]

RESPONDENTS' DEMURRER TO COM-
PLAINANT'S AMENDED BILL OF
COMPLAINT.

Comes now Oliver T. Shipman, Treasurer of the County of Hawaii, and the County of Hawaii, respondents in the above-entitled cause, and demurs to the complainant's bill of complaint upon the following grounds:

1. That the complainant has not in and by his amended bill of complaint made or stated facts sufficient to entitle him to any relief prayed for in his said amended bill of complaint.

2. That the said complainant is not entitled to relief in a court of equity, for the reason, he has a full, complete and adequate remedy at law.

Dated at Hilo, Hawaii, June 24th, A. D. 1930.

OLIVER T. SHIPMAN,
Treasurer of the County of Hawaii, and
THE COUNTY OF HAWAII,
Respondents.

By W. H. BEERS and
(Sgd.) A. G. CORREA,

County Attorney and Deputy County Attorney,
County of Hawaii, and Deputy Attorney Gen-
eral. [30]

I, A. G. Correa, Deputy County Attorney of the County of Hawaii, and Deputy Attorney General, acting for and on behalf of the respondents, hereby

certify that the foregoing demurrer is made and filed in good faith and is not interposed for the purpose of delay.

(Sgd.) A. G. CORREA. [31]

[Endorsed]: Filed at 1:30 o'clock P. M., July 31, 1930. [32]

[Title of Court and Cause—No. 203.]

**RULING ON DEMURRER TO AMENDED
BILL OF COMPLAINT.**

The demurrer to the amended bill was submitted without argument, the respondent, however, insisting on a ruling on the second ground of the demurrer, viz., that complainant has a full, complete and adequate remedy at law.

The ruling on the first ground of the demurrer to the original bill filed in this case is adopted as the ruling on this same ground to the amended bill.

The complainant has a full, complete, and adequate remedy at law.

Peacock vs. Wright, 1 U. S. D. C. Hawaii,
294.

Taylor vs. City and County, 25 Haw. 632
(635-6).

Wetson vs. Kunewa, 29 Haw. 555.

Pacific Express Co. vs. Seibert, 44 Fed. 310.
affirmed in 142 U. S. 339.

Milwaukee vs. Koeffler, 116 U. S. 219.

Henrietta Mills vs. Rutherford County, 281
U. S. 121.

The bill is dismissed at complainant's costs.

Dated at Hilo, T. H., July 31st, 1930.

[Seal] (Sgd.) HOMER L. ROSS,
Judge. [33]

Filed at 2:05 o'clock P. M., Aug. 4th, 1930.

Received copy of the same Aug. 4, 1:45 P. M.

(Sgd.) C. W. CARLSMITH. [34]

In the Circuit Court of the Fourth Circuit, Territory of Hawaii.

AT CHAMBERS—IN EQUITY.

Suit for Injunction Against Enforcement of Illegal Tax and for Other Equitable Relief.

ISOJIRO KITAGAWA,

Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County of Hawaii, and COUNTY OF HAWAII,
Respondents.

DECREE SUSTAINING RESPONDENTS' DEMURRER TO COMPLAINANT'S AMENDED BILL OF COMPLAINT.

This cause coming on for hearing on the 28th day of July, 1930, upon respondents' demurrer to complainant's amended bill of complaint, and the Court being fully advised in the premises, and having filed its ruling or decision on the demurrer on the 31st day of July, A. D. 1930, wherein the Court held,

that the ruling on the first ground of the demurrer to the original bill, filed in this case is adopted as the ruling on this same ground to the amended bill;

And that the complainant has a full, complete and adequate remedy at law,—

Therefore, upon consideration thereof, IT IS ORDERED, ADJUDGED AND DECREED, that the complainant's amended bill of complaint herein be and the same hereby is dismissed, and that respondents recover their costs herein, taxed at \$7.50, complainant to pay the costs of court taxed in the sum of \$17.00.

Dated at Hilo, Hawaii, this 4th day of August, A. D. 1930.

[Seal]

(Sgd.) HOMER L. ROSS,

Judge. [35]

Filed at 3:20 o'clock P. M., Aug. 7th, 1930.

[Title of Court and Cause—No. 203.]

NOTICE OF APPEAL AND APPEAL.

Comes now Isojiro Kitagawa, the complainant in the above-entitled cause, and files this notice of his appeal and hereby appeals from the final decree made and entered herein on the 4th day of August, A. D. 1930, to the Supreme Court of the Territory of Hawaii.

Dated at Hilo, Hawaii, August 7th, 1930.

ISOJIRO KITAGAWA,

Complainant.

By (Sgd.) CARL S. CARLSMITH,

His Attorney. [36]

CLERK'S MINUTES. [37]

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—APRIL 21, 1930—
HEARING ON DEMURRER.

Monday, April 21, 1930.

The Court convened at 10:05 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

BERNARD H. KELEKOLIO, Asst.
Clerk.

GEORGE R. CLARK, Reporter.

Present: W. H. Beers for the respondent; Mr. C. S. Carlsmith for complainant.

This matter coming on for hearing on the demurrer, Mr. Beers stated in open court that he has agreed with Mr. Carlsmith that this matter be taken up Saturday morning at 9:00 o'clock.

With reference to the other cases of like nature, Eq. Nos. 204, 205, 206, they are passed generally. At 10:15 A. M. the Court took a recess.

By the Court:

(Sgd.) BERNARD H. KELEKOLIO.

BERNARD H. KELEKOLIO,

Asst. Clerk. [38]

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—APRIL 26, 1930—
ORDER AMENDING COMPLAINT.

Saturday, April 26th, 1930.

The Court convened at 10:00 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

A. K. AONA, Clerk.

GEORGE R. CLARK, Reporter.

Mr. Wendell Carlsmith, appearing for complainant; W. H. Beers for the respondent.

Mr. Carlsmith asked the Court that he would like to amended the complaint by adding a new section to paragraph 4, and the Court ordered that the amendment may be made, and the demurrer to stand to the amended complaint. The Court appointed W. H. Smith as Master *Amicus Curiae*. At 10:06 Mr. Beers argues. Mr. Wendell Carlsmith argues. The case is continued for further argument until 10:20 A. M., Monday, April 28th, 1930.

By the Court:

A. K. AONA,
Clerk.

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—APRIL 29, 1930—
ARGUMENT ON DEMURRER.

Tuesday, April 29th, 1930.

The Court convened at 10:00 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

BERNARD H. KELEKOLIO, Asst.
Clerk.

GEORGE R. CLARK, Reporter, [39]

Further argument on demurrer. Present, C. S. Carlsmith for the complainant; W. H. Beers, County Atty., for the respondent; W. H. Smith, *Amicus Curiae*. Mr. W. H. Smith presented his argument to the Court, and followed by W. H. Beers and Carlsmith. At 11:15 A. M. this matter was passed for a few minutes, as the Grand Jurors were present in court ready to file a report.

Eq. 203. Further argument by counsel. The Court takes this matter under advisement. At 11:25 A. M., the Court took a recess.

By the Court:

A. AONA,
Clerk.

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—MAY 22, 1930—MO-
TION TO STRIKE AMENDED BILL OF
COMPLAINT.

Thursday, May 22d, 1930.

The Court convened at 10:10 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presid-
ing.

BERNARD H. KELEKOLIO, Asst.
Clerk.

GEORGE R. CLARK, Reporter.

Amended bill of complaint. Motion to strike
amended complaint. Hearing. Present: Mr. Wen-
dell Carlsmith for the complainant; Mr. W. H.
Beers, for O. T. Shipman. Both presented argu-
ment and the Court took this matter under advise-
ment.

By the Court:

BERNARD H. KELEKOLIO,
BERNARD H. KELEKOLIO,
Asst. Clerk. [40]

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—MAY 23, 1930—RULING ON MOTION TO DISMISS AND STRIKE COMPLAINANT'S BILL OF COMPLAINT.

Friday, May 23d, 1930.

The Court convened at 9:10 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

A. K. AONA, Clerk.

GEORGE R. CLARK, Reporter.

Hearing. Present: Wendell Carlsmith for complainant; W. H. Beers for County. Ruling on motion to dismiss and strike complainant's bill of complaint. The Court at this hearing ruled sustaining the motion to dismiss and strike complainant's bill of complaint, that is, the amended bill of complaint. Mr. Carlsmith moved that he be allowed to file a motion to amend; Mr. Beers objects and asked the court that he be allowed to file a written objection, and the court pass this matter over until to-morrow morning at 9 A. M. in which time the presentation of said motion to be taken up. At 9:20 A. M. the court took a recess.

By the Court:

(Sgd.) BERNARD H. KELEKOLIO,

Asst. Clerk.

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—MAY 24, 1930—ORDER
GRANTING MOTION TO FILE AMENDED
BILL OF COMPLAINT.

Saturday, May 24th, 1930.

The Court convened at 10:00 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

BERNARD H. KELEKOLIO, Asst.
Clerk.

GEORGE R. CLARK, Reporter.

Motion for leave to file amended complaint.
Hearing. [41] Presented: Mr. Wendell Carlsmith for complainant; Mr. W. H. Beers for O. T. Shipman. Mr. Beers makes his formal objection to the motion on the ground that the demurrer having been sustained, the complainant has no right to file the motion. The Court ORDERED that the motion is granted and the amended complaint to be filed by Wednesday on the 28th.

By the Court:

BERNARD H. KELEKOLIO.
BERNARD H. KELEKOLIO,
Asst. Clerk.

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—JUNE 24, 1930—
ORDER DENYING MOTION TO SUBMIT
AND STRIKE.

Tuesday, June 24th, 1930.

The motion to dismiss and strike filed in this cause on June 2, 1930, is denied and the respondent is allowed an exception. Respondent is required to answer within the time prescribed by law.

By the Court:

BERNARD H. KELEKOLIO,
BERNARD H. KELEKOLIO.

Asst. Clerk.

[Title of Court and Cause—No. 203.]

MINUTES OF COURT—JULY 28, 1930—
ORDER SUBMITTING DEMURRER TO
COMPLAINANT'S AMENDED BILL OF
COMPLAINT.

Monday, July 28th, 1930.

The Court convened at 10:10 o'clock A. M.

Present: Hon. HOMER L. ROSS, Judge Presiding.

BERNARD H. KELEKOLIO, Asst.
Clerk. [42]

Respondent's demurrer to complainant's amended bill of complaint. Argument. Present: Wendell Carlsmith for complainant; W. H. Beers, County Attorney for respondent, O. T. Shipman, Treasurer.

Mr. Beers stated in open court that on June 23d he filed a demurrer to complainant's amended bill of complaint and is willing to submit the case without argument. In the other two cases he is also willing to submit those cases on the demurrer filed. The decision in the Kitagawa case will control in the other cases. Mr. Carlsmith stated in open court that the only case for argument before the court is the Kitagawa case; we will also file an amended complaint in the other two cases the same as we have done in the Kitagawa case. In the Mana Transportation case we are not ready to present argument. Mr. Beers stated that if counsel will file an amended complaint in the other three cases, he would be willing to give counsel ample time to do so. By agreement of counsel these cases are passed until Saturday morning. At 10:25 A. M. the court took a recess.

By the Court:

BERNARD H. KELEKOLIO,
BERNARD H. KELEKOLIO,
Asst. Clerk. [43]

[Endorsed]: Filed at 11:20 o'clock A. M., Aug. 12th, 1930. [44]

[Title of Court and Cause—No. 203.]

BOND OF COMPLAINANT FOR COSTS TO
ACCRUE ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, I. Kitagawa, as principal, and The Hawaiian Insurance & Guaranty Company, Limited, as surety, are bound and firmly held unto James A.

Thompson, Clerk of the Judiciary of the Territory of Hawaii, in the penal sum of \$50.00, for the payment of which well and truly to be made we, the said principal and surety, do hereby bind ourselves jointly and severally by these presents.

Executed by the said principal and surety on this 12th day of August, A. D. 1930.

The condition of the foregoing obligation is such that in a cause lately pending in the Circuit Court of the Fourth Circuit, Territory of Hawaii, In Equity, At Chambers, wherein the said principal obligor was complainant and the County of Hawaii and O. T. Shipman were respondents, on the 4th day of August, 1930, there was entered a final decree dismissing the bill of complaint of the complainant, and the complainant, [45] wishing to take advantage of Section 2509 of the Revised Laws of the Territory of Hawaii, 1925, has filed his appeal and notice of appeal, and he has undertaken that he will pay all costs further to accrue on said appeal in case he be defeated in the Appellate Court.

Now, if the said principal obligor shall fail to pay all such costs to accrue on said appeal, then this obligation shall be of full force and effect; otherwise void and of no effect.

I. KITAGAWA.

By (Sgd.) CARL S. CARLSMITH,

His Attorney.

THE HAWAIIAN INSURANCE & GUAR-
ANTY COMPANY, LIMITED.

By (Sgd.) GWYNN I. MATTHIAS (Seal)

Nos. 1874–1875.

In the Supreme Court of the Territory of Hawaii.
October Term, 1930.

No. 1974.

Appeals from Circuit Judge, Fourth Circuit.
Hon. H. L. ROSS, Presiding.

ISOJIRO KITAGAWA,

Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Respondents.

No. 1975.

THE MANA TRANSPORTATION COMPANY,
LIMITED, an Hawaiian Corporation,
Complainant,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Respondents.

OPINION OF THE SUPREME COURT.

Filed December 30, 1930, at 11:15 A. M. J. A.
Thompson, Clerk. [47]

In the Supreme Court of the Territory of Hawaii.
October Term, 1930.

No. 1974.

ISOJIRO KITAGAWA

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII.

No. 1975.

THE MANA TRANSPORTATION COMPANY,
LIMITED, an Hawaiian Corporation,

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII.

Appeals from Circuit Judge, Fourth Circuit.

Hon. H. L. ROSS, Judge.

Argued November 24, 1930.

Decided December 30, 1930.

PERRY, C. J., BANKS and PARSONS, JJ.

Constitutional Law—Automobile weight tax—Val-
idity.

Section 1306, R. L. 1925, imposing a weight tax on
motor vehicles, does not violate the Fifth or the
Fourteenth Amendments to the Constitution of
the United States. [48]

OPINION OF THE COURT BY PERRY, C. J.

These are suits in equity praying for injunctions
to restrain the respondent from collecting taxes,

in the first on sixteen second-hand motor vehicles and in the second on twenty motor trucks. In the petition in the Mana Company's case it is alleged that the trucks are at the present time in its possession and are being used in its business of transportation of freight. In the petition in the Kitagawa case the allegations on this subject are as follows: "That the complainant is principally engaged * * * in the business of buying and selling motor vehicles, * * * and as a part of his necessary equipment and stock in trade * * * has on hand and is the owner of sixteen second-hand motor vehicles, which * * * are deposited in his stock and sales room, and are not used upon the public highway. * * * That the complainant, in accordance with his usual course of business, has offered for sale and will hereafter continue to offer for sale the said sixteen motor vehicles, and that the same are of value to him only when they can be readily sold in the regular course of business."

Demurrers to the bills on the grounds that upon the facts stated the petitioners were not entitled to relief and that an adequate remedy was available at law, were sustained. From decrees dismissing the bills, the cases come to this court by appeal.

The statute under which the county treasurer, respondent herein, is seeking to collect the taxes on the automobiles and trucks is section 1306, R. L. 1925. That section provides: "All automobiles and other power driven vehicles (all such vehicles being hereinafter referred to as motor vehicles) shall [49] be subject to an annual tax of one cent for

each pound in weight of such motor vehicle, to be paid by the owners thereof, which tax shall be collected by the treasurer or his deputy, of the county or city and county, as the case may be, and shall become due and payable on the first day of January and must be paid before the first day of March in each year. In determining the amount of tax for motor vehicles, the weight taken shall be that of such motor vehicles when in ordinary use and with all its accessories and fittings, including fuel and water." Partial exemptions are provided in favor of cars bought after January 1 of each year, vehicles brought into the Territory for temporary use by nonresidents and new vehicles in stock for purposes of sale. The section further provides: "Upon receipt of such tax the treasurer or his deputy shall number and register such motor vehicle in the owner's name in a permanent record or book to be kept by him for this purpose, and shall furnish the owner thereof with a receipt which shall shown upon its face the license number of such motor vehicle, and shall state the fact that the tax has been paid thereon for the whole or the remainder of the current year in which the receipt is issued. The treasurer or his deputy shall also furnish the owner with two number plates for such motor vehicles with the number and year marked thereon, charging therefor in addition to the tax the sum of one dollar. The owner shall attach such number plates to such motor vehicle, one on the front and the other on the rear thereof, which number plates shall be securely fastened to the motor vehicle in such a

way as to prevent such number plates from swinging and at a minimum of sixteen inches from the ground. All such number plates shall be so placed that they shall be plainly visible. * * * The treasurer shall immediately notify the sheriff of the county or city and county of numbers issued by him with a general [50] description of the motor vehicle and the name and address of the owner to whom issued. The sheriff of the county or city and county shall record such numbers, description of motor vehicles and names and addresses of the owners to whom such numbers are issued in a permanent record or book to be kept by him for this purpose. * * * Any motor vehicle not having the number plates required by this section, or any motor vehicle upon which taxes are delinquent as hereinbefore provided, may be seized wherever found by the treasurer, his deputy or by any sheriff." Provision is also made for the sale of all vehicles seized and not redeemed within a time specified.

The contention of the complainants in support of these suits is that the statute "attempts to levy a 'property tax' based upon the weight of automobiles; that the weight of automobiles bears no relation whatsoever to the value of said automobiles; that should this tax be collected" the complainants "would be denied the equal protection of the laws and deprived of" their "property without due process of law,"—contrary to the Fifth and the Fourteenth Amendments to the Constitution. And that the statute also "attempts to charge the complain-

ants' property for the use of the highways whether or not it is to be used upon the highways," and thus constitutes a denial of the equal protection of the laws and deprived the complainants of their property without due process of law.

Taxes on automobiles and motor trucks, measured by the weight of the vehicles, are no longer a novelty. They have been long resorted to in various jurisdictions and have been sustained by courts. The effect of motor vehicles on roads is far different from that which resulted from the passage of horse-drawn vehicles. For the use of motor vehicles, some carrying freight, some carrying passengers, some employed for [51] purposes of business and others for purposes of pleasure, stronger and better roads have become necessary than those which sufficed before the advent of traffic of this kind. Roads sufficient to bear motor traffic are expensive to build and expensive to maintain. It is just that the vehicles which make necessary these huge expenditures should bear at least some part of the cost of construction and maintenance of the roads. A tax on motor vehicles, measured by their weight, is designed in part at least to secure compensation to the community that builds the roads and to secure it with some approach to a due proportion as between the vehicles or owners thereof who contribute the tax. A large truck carrying heavy loads of freight is far more destructive to the roadway than is a light automobile which carries passengers only.

The purpose of such a tax, however, is not merely

to secure compensation to the Government for the building and maintenance of the roads, but may also be to regulate, under the police power. A larger and heavier automobile is ordinarily more difficult of control than a smaller one. It is also more destructive of other automobiles and of other property and of persons than is a light machine. Automobile accidents are frequent and the traffic requires a large measure of police surveillance as well as action by courts. These reasons may well actuate legislators in determining to impose a tax of this nature.

A tax imposed in accordance with the engine power of the vehicles attains substantially the same result and for the same reasons, for it furnishes a fair degree of measurement of the destructive power of the cars and the control of which they are susceptible.

The Maryland legislature by statute prescribed a comprehensive scheme for licensing and regulating motor vehicles. [52] Registration fees were fixed according to horse-power. The constitutionality of the Act having been drawn in question, the Court said: "The movement of motor vehicles over the highway is attended by constant and serious dangers to the public, and is also abnormally destructive to the ways themselves. Their success depends on good roads the construction and maintenance of which are exceedingly expensive; and in recent years insistent demands have been made upon the states for better facilities, especially by the ever-increasing number of those who own such vehicles. As is well known, in order to meet this demand and

accommodate the growing traffic the State of Maryland has built and is maintaining a system of improved roadways. Primarily for the enforcement of good order and the protection of those within its jurisdiction the state put into effect the above-described general regulations, including requirements for registration and licenses. A further evident purpose was to secure some compensation for the use of facilities provided at a great cost from the class for whose needs they are essential and whose operations over them are peculiarly injurious. In the absence of national legislation covering the subject a state may rightfully prescribe uniform regulations necessary for public safety and order in respect to the operation upon its highways of all motor vehicles—those moving in interstate commerce as well as others. And to this end it may require the registration of such vehicles and the licensing of their drivers, charging therefor reasonable fees graduated according to the horse-power of the engines—a practical measure of size, speed, and difficulty to control. This is but an exercise of the police power uniformly recognized as belonging to the states and essential to the preservation of the health, safety and comfort of their citizens.” *Hendrick vs. Maryland*, 235 U. S. 610, 622. [53]

“The Oregon motor vehicle law, by its express terms, exacts a fee frequently called by the courts a ‘privilege tax’ for operating motor vehicles upon the highways of this state. It is not a tax upon property. It is a charge upon privilege. That such a tax is constitutional has been so well estab-

lished by judicial decision that there can be no doubt as to its validity. The Oregon motor vehicle law does not tax the property of plaintiff one dollar. It does, however, exact compensation for the privilege of operating its cars upon the highways of the state. * * * Under the Oregon motor vehicle law the value of the car has nothing to do with the amount of the registration fee exacted. The charge against an aged Ford, capable of being driven upon the highways, is as great as that upon that popular car fresh from the factory. An old car, of the value of not to exceed four or five hundred dollars, that has deteriorated by years of hard service, is taxed as high as a new car value at five thousand dollars, if of equal weight. This could not be so if the registration fee were an *ad valorem* tax assessed against property. The fee is for regulation, including compensation, and is not a tax upon property." *Camas Stage Co. vs. Kozer*, 104 Ore. 600, 615, 618, 619.

Referring to motor vehicles, the Supreme Court of Illinois has said: "These ponderous vehicles driven by powerful engines are a menace to the public safety unless managed and driven by persons who are competent and qualified to operate them. Those used for transporting heavy merchandise are practically engine-driven freight cars." *Chicago vs. Kluever*, 257 Ill. 317, 324, repeated in *Westfalls Storage Co. vs. Chicago*, 280 Ill. 318, 320.

The power of this Territory, under present laws, to tax is beyond doubt. In the exercise of the power of taxation [54] it may make classifications that, as

has been often said, bear some reasonable relation to the objects to be accomplished. It may also in the exercise of the police power regulate and control in practical ways dangerous traffic like that of motor vehicles. If the statute now under consideration expressly imposed the tax upon those motor vehicles only which used the public highways, the validity of the tax probably would be unquestioned. The attack appears to be made in these cases because the law does not on its face discriminate between vehicles which do use the highways and those which do not use them. It is entirely clear upon the allegations in the Mana case that the trucks upon which the tax is sought to be imposed are constantly using the highways in the course of the transaction of the business of their owner. The allegation in the petition in the Kitagawa case that the vehicles "are not used upon the public highway" must be deemed to be qualified by the further allegation, in the same petition, that these second-hand vehicles constitute a part of the stock in trade of the petitioner whose business is to buy and sell automobiles and whose purpose and daily effort is to sell these particular sixteen automobiles at the earliest possible dates. It is matter of common knowledge that in the effort to sell automobiles, whether used or unused, the machines are necessarily taken and driven upon the highways in order to demonstrate to the prospective purchasers their power and their fitness generally for use. It is apparent from all of the allegations of the petition that while at times these sixteen vehicles are

at rest in the garage of the owner, they are at other times taken upon the highways for use thereon and are intended and desired by the present owner and the purchasers from him for use on the highways at frequent intervals. The legislature evidently considered [55] it impractical to provide a scheme of taxation measured mathematically by the extent of the use of the vehicles upon the highways or to say that second-hand automobiles in perfect running order held for sale should bear the tax only when actually sold. That there would have been difficulties in collecting such a tax is obvious. The cost to the Territory of enforcing such a law and of observing and proving the precise occasions when the vehicles are used and when they are not used might well be burdensome. The legislature would be justified in proceeding upon the theory that if an automobile is possessed which is in perfect condition for use it is intended for use on the public highways and will be so used.

In other words, that the tax is not (aside from its regulatory aspects) a tax on property is obvious from the fact that the mere weight of automobiles does not bear any relation to their values. Cars retain their weight in spite of increasing age. A Packard or a Lincoln ten years of age weighs far more than a small Ford fresh from the factory and yet the latter may be of far greater market value. The tax, in addition to being an exercise of the police power, is imposed on the privilege of using these vehicles on the public highways,—vehicles which, as above pointed out, not only require ex-

pensive highways but also endanger persons and property and necessitate added police protection—and does not apply or is not imposed on vehicles which, lacking vital parts, clearly are not intended for use on the highways and, in truth, are not “automobiles” or “power-driven vehicles.” This latter class of vehicles would bear the ordinary property tax of a percentage on their value.

While section 1306 does not (in the case of second-hand cars) in words limit the tax to motor vehicles which [56] actually use the highways, it imposes a tax on all complete, useable second-hand cars on the theory that they will be used on the highways. The instances of ownership of complete, second-hand vehicles, in good running order, on hand and unused for a whole taxable year are extremely rare. Tax laws need not be perfect,—perhaps none have been invented which are perfect. If they come as near as is practicable to being perfect and to securing equality, that is all that can be expected of a legislature composed of human beings. The exemption for three months of *new* cars in stock for sale is another illustration of a necessary imperfection in the law—in this instance in favor of the dealers. Such cars may be used repeatedly on the highways during the three months’ period for purposes of demonstration and yet pay no tax during that period. Again, they may remain unsold for six months instead of three and yet are exempt for the first three months only. Legislatures and courts must be practical. A declaration of uncon-

stitutionality cannot be based upon unavoidable imperfections.

In our opinion, it was within the power of the legislature to impose the weight tax under consideration. The decrees appealed from are affirmed.

ANTONIO PERRY.

JAS. J. BANKS.

C. W. CARLSMITH (C. S. CARLSMITH, with him on the briefs), for Complainants.

C. N. TAVARES, Second Deputy Attorney General, E. R. MCGHEE, Third Deputy Attorney General, and W. H. BEERS, County Attorney of Hawaii (H. R. HEWITT, Attorney General, E. R. MCGHEE and W. H. BEERS on the brief), for Respondents. [57]

CONCURRING OPINION OF PARSONS, J.

I concur in the conclusion reached by the majority, namely, that "it was within the power of the legislature to impose the weight tax under consideration," and in its affirmance of the decrees appealed from. I do not, however, agree "that the tax is not (aside from its regulatory aspects) a tax on property." In my view the motor vehicle tax provided by section 1306, R. L. 1925, and its amendments is a specific tax, provided, with respect to all property within the class therein named, in lieu of the general property taxes set forth under the caption "*ad valorem* taxes" in section 1315, R. L. 1925, and its amendments; that its primary purpose is to provide public revenue, and that it is for the foregoing reasons in part at least a property

tax. But even so it is a tax upon property requiring a distinct classification for the reason that the property thereby taxed is properly subject to the important license and police regulatory provisions set forth in the majority opinion, and for the further reason that the registration, transfer, and use on the public highways of such property are subject to the more extensive police regulations provided by Act 197, L. 1929.

That the tax itself, not being based upon the use of said property, therefore lacks an ingredient necessary to make it, in whole or in part, an excise is claimed by the complainant. A decision upon that point is not necessary to a decision of the case in the view herein presented.

Under a law with regulatory features different from our own the Supreme Court of Minnesota, in its earlier cases, considered the motor vehicle tax as a property tax. Later it was definitely announced that the tax was a property tax including an element of privilege tax. This latter holding now embodies [58] the settled doctrine in that state. See *American Railway Express Co. vs. Holm*, 173 Minn. 72, 216 N. W. 542, 543. Under an earlier decision in the same state it was held that a statute providing for the taxation of motor vehicles once used on the public streets and highways on a more onerous basis than other personal property is not in contravention of the state constitution; and this notwithstanding the fact that the tax was then held to be not a privilege tax but a tax on property. State

vs. Peterson, 159 Minn. 269, 198 N. W. 1011. Quoting from the last cited report, on page 1012: "In State vs. Royal Mineral Assn., 132 Minn. 232, 156 N. W. 128, Ann. Cas. 1918A, 145, it was said that under the constitution on the power of the legislature, classifying subjects for taxation, is exceedingly broad. This was repeated in State vs. Minn. etc. Co., 145 Minn. 231, 176 N. W. 756, the court adding that the classification must be based on differences furnishing a reasonable ground for making a distinction between the several classes. The constitutional requirement is that all taxes shall be uniform on the same class of subjects. In classifying motor vehicles for taxation as it has, the legislature adopted past or prospective use of the public highways as the basis for classification. The burden of taxation is uniformly imposed upon all motor vehicles in the class thus created. No classification is possible which will not result in occasional hardships. The legislature might have provided that an automobile not operated on a public highway for an entire calendar year should be exempt in that year from the tax imposed by the act, but, if the tax in a particular year could not be collected unless the state could show that there had been a user of the highways at some time in the year, it might be difficult to enforce collection of the tax. This is a practical consideration [59] which may have influenced the legislature in adopting the rule prescribed by section 16. The rule has the merit of certainty—a consideration which might properly guide the exercise of legislative discretion."

Under state constitutions requiring equality and uniformity of taxation statutes providing specific taxes upon motor vehicles in lieu of *ad valorem* taxes have been held valid. See State ex rel. Fargo vs. Wetz, 168 N. W. 835, 5 A. L. R. 731. Quoting from the last cited report, on page 747, "Much of the argument of counsel for the petitioner seems based upon the hypothesis that the constitution precludes taxation of any other character than a property tax levied upon *ad valorem* assessment. It is doubtless true that, under the constitution as it stood prior to the amendment, no other tax upon property than one levied upon an *ad valorem* assessment at a uniform valuation was contemplated. But, under § 176 as amended, the only requirement is one of uniformity within a class. In some of the states, Georgia, for instance, the constitution provides not only that taxation shall be uniform upon the various classes of subjects within the territorial limits of the authority levying the tax, but in addition contains the express requirement that property taxation shall be *ad valorem*. * * * Had it been desired to limit the power of the legislature to prescribe property taxes in such a way as to permit no other kind of tax except one levied upon an *ad valorem* basis, it would seem that such a limitation would have been expressed in § 176. In the absence of such a provision, it cannot be held that the legislature is precluded from laying a property tax upon any basis that will exact contributions according to an equitable standard, and one which is free from the vice of arbitrary classification." [60]

Upon the subject of equality and uniformity of taxation state constitutions are much more explicit than are the Fifth and Fourteenth Amendments of the Federal Constitution with which the complainants claim our motor vehicle law is in conflict.

As to the Fourteenth Amendment: “ * * * nor shall any state deprive any person of * * * property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” Assuming the foregoing Amendment to be applicable in the premises: “Taxation need not be equal and uniform unless required to be so by the state constitution, subject to the exceptions that the equal protection of the law clause of the Federal Constitution forbids discrimination between persons or property belonging to the same class, and that occupation and license taxes must be equal and uniform on persons of the same class.” 1 Cooley, Taxation (4 Ed.), sec. 247.

As to the Fifth Amendment: “No person shall * * * be deprived of * * * property, without due process of law.” Cooley discusses the meaning of “due process of law” with reference to the Fourteenth Amendment. What follows is in part applicable to the Fifth: “It will be observed that the due process of law clause contains no specific limitation upon the power of the states to impose taxes. ‘Due process of law’ is not defined by the federal or state constitutions, and the courts have deemed it impossible to frame a definition covering all cases. The term is synonymous with ‘law of the land.’ A strict interpretation of the

words 'due process of law,' it has been said, 'would limit their effect to matters of procedure rather than of substantive law,' but while 'the majority of the cases on the subject do undoubtedly refer to matters of procedure, [61] classifying notice and hearing as subjects of procedure,' yet 'these rights as to procedure which attain to the dignity of constitutional rights are so substantial that the distinction between them and real substantive rights is very shadowy, to say the least.' What would be due process if done under the taxing power is not necessarily due process if done under some other power. In tax cases, especially those carried to the Supreme Court of the United States, it is customary, it seems, to add to other constitutional objections, for good measure, the contention that the tax law violates the due process of law provision. In nearly every case, however, except those cases where notice and hearing are involved, the court has merely rejected the contention without discussion. The result is that hundreds of cases are to be found in the digest holding that a particular tax statute, as to substantive rights, does not violate the due process clause. These decisions are of little or no value. In fact outside of decisions relating to notice and hearing and the like, the particulars in which tax statutes may violate the due process clause are very limited. * * * At any event, in order to bring taxation imposed by a state, or under its authority, within the scope of the provision of the Fourteenth Amendment which prohibits the deprivation of property without due process of

law, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really a spoliation under the power to tax. A state tax law will be held to conflict with the due process clause in the Federal Constitution 'only where it proposes, or clearly results in, such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation—to spoliation under [62] the guise of exerting the power of taxing.'” 1 Cooley, Taxation, sec. 143, pp. 330, 337.

Within the definitions above set forth section 1306, R. L. 1925, is not discriminatory between persons or property of the same class, nor does it propose or clearly result in “such flagrant and palpable inequality between the burden imposed and the benefit received, as to amount to the arbitrary taking of property without compensation.” See *Dane vs. Jackson*, 256 U. S. 589, 65 L. Ed. 1107, 41 Sup. Ct. 566.

For the reasons above set forth I concur with the majority in the opinion that said section does not violate the Fifth or the Fourteenth Amendments of the Constitution of the United States.

CHARLES F. PARSONS. [63]

[Endorsed]: Filed January 16, 1931, at 10:07
A. M. [64]

No. 1974.

In the Supreme Court of the Territory of Hawaii.

ISOJIRO KITAGAWA,

Complainant-Appellant.

vs.

OLIVER T. SHIPMAN, Treasurer of the County
of Hawaii, and COUNTY OF HAWAII,
Respondents-Appellees,

DECREE ON APPEAL.

In the above-entitled cause, pursuant to the opinion of the above-entitled court rendered and filed December 30, 1930, the decree appealed from is affirmed, the costs of the Supreme Court, amounting to \$14.00, to be taxed against the complainant-appellant.

Dated at Honolulu, T. H., January 16, 1931.

By the Court:

[Seal]

J. A. THOMPSON,
Clerk, Supreme Court.

Approved:

ANTONIO PERRY,
Chief Justice.

Form approved Jan. 15, 1931.

C. NILS TAVARES,
Atty. for Appellees. [65]

[Endorsed]: Filed March 17, 1931, at 3:00
o'clock P. M. [66]

[Title of Court and Cause—No. 1974.]

PETITION FOR APPEAL.

To the Honorable ANTONIO PERRY, Chief Justice of the Supreme Court of the Territory of Hawaii:

Now comes the complainant-appellant herein, Isojiro Kitagawa, by and through Carl S. Carlsmith, Esquire, and C. W. Carlsmith, Esquire, his attorneys, and feeling aggrieved by the final decree of this Court entered herein on the 16th day of January, 1931, hereby prays that an appeal may be allowed him from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, State of California, according to the laws of the United States in that behalf made and provided, and that a transcript of the record and proceedings upon which said decision and decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for said Circuit, and in connection with this [67] petition, petitioner herewith presents his assignments of error.

And petitioner further prays that the amount of security may be fixed by order allowing this appeal.

Your petitioner further shows that said decision and decree were rendered in an action in equity, and that the Constitution of the United States is involved in said controversy.

Dated: Honolulu, T. H., this 20th day of January, 1931.

CARL S. CARLSMITH and
C. W. CARLSMITH,
Attorneys for Complainant-Appellant.

Territory of Hawaii,
City and County of Honolulu,—ss.

C. W. Carlsmith, being first duly sworn, deposes and says: That he is one of the attorneys for Isojiro Kitagawa, petitioner herein; that he has read the above and foregoing petition for appeal and knows the contents thereof; that the same is true and that there is involved in the cause aforesaid constitutional questions.

C. W. CARLSMITH.

Subscribed and sworn to before me this 20th day of January, 1931.

[Seal] SAMUEL KAALOA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

The service of a copy of the within petition for appeal this day admitted. Dated March 17, 1931.

E. R. MCGHEE,
Attorney for Appellees. [68]

[Endorsed]: Filed March 17, 1931, at 3:00 o'clock
P. M. [69]

[Title of Court and Cause—No. 1974.]

ASSIGNMENTS OF ERROR.

Comes now ISOJIRO KITAGAWA, complainant-appellant in the above-entitled cause, by Carl S. Carlsmith, Esq., and C. W. Carlsmith Esq., his attorneys, and says:

That in the above-entitled cause in the Supreme Court of the Territory of Hawaii, and in the rendition of its final decision and decree therein, there are and have intervened manifest errors prejudicial to said complainant-appellant, to wit:

1. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, as applying to automobiles in use on the public highways of the Territory of Hawaii is not arbitrary and does not violate the rights of plaintiff as guaranteed to it by the Fifth and Fourteenth Amendments of the Constitution of the United [70] States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

2. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, as applying to automobiles in use on the public highways of the Territory of Hawaii

is not arbitrary and does not violate the rights of the plaintiff as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

3. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180, of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing a tax graduated according to the weight upon automobiles not used or intended to be used upon the public highways of the Territory of Hawaii does not violate the rights of the plaintiff as guaranteed to him by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

4. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing [71] a tax graduated according to the weight upon automobiles not used or intended to be used upon the public highways of the Territory of Hawaii does not violate the rights of the plaintiff as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

5. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing an excise tax graduated according to weight upon automobiles not using the public highways of the Territory of Hawaii, nor intended to be used upon said highways, for the privilege of using said highways does not violate the rights of the plaintiff as guaranteed to him by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

6. The Court erred in holding that Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, imposing an excise tax graduated according to weight upon automobiles not using the public highways of the Territory of Hawaii, nor intended to be used upon said highways, for the privilege of using said highways is not violative of the rights of the plaintiff as guaranteed to [72] him by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

7. The Court erred in holding that a property tax levied according to a scheme of classification bearing no relationship to value does not violate the

rights of the plaintiff as guaranteed to him by the Fifth and Fourteenth Amendments of the Constitution of the United States, and particularly in that portion of the said amendments wherein the plaintiff is guaranteed the constitutional right of due process of law.

8. The Court erred in holding that a property tax levied according to a scheme of classification bearing no relationship to value does not violate the rights of the plaintiff as guaranteed to him by the Fourteenth Amendment of the Constitution of the United States, and particularly in that portion of the said amendment wherein the plaintiff is guaranteed the constitutional right of equal protection of the laws.

9. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is in part an excise tax charging for the use of the public highways.

10. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, as amended by Act 180 of the Session [73] Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is not a property tax.

11. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by

Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is in part a regulatory tax under the police powers.

12. The Court erred in taking judicial notice of the fact that automobiles offered for sale are of necessity upon the public highways, which holding is contrary to the pleadings in the case.

13. The Court erred in holding that if an automobile is possessed, which is in perfect condition for use, it is intended for use on the public highways and will be so used.

14. The Court erred in holding that the automobile weight tax imposed by Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927, is not a property tax because "the weight of automobiles does not bear any relationship to their value."

15. The Court erred in holding that vehicles lacking in vital parts are not automobiles or power driven vehicles within the meaning of Section 1306 of the Revised Laws of Hawaii, 1925, as amended by Act 180 of the Session Laws of Hawaii, 1925, and by Acts 33, 172 and 246 of the Session Laws of Hawaii, 1927. [74]

16. The Court erred in holding that "the instances of ownership of complete second-hand vehicles in good running order on hand and unused for a whole taxable year are extremely rare."

17. The Court erred in holding that complainant's pleadings stated that the automobiles involved

in the above-entitled cause are at times upon the public highways of the Territory of Hawaii.

18. The Court erred in refusing to overrule respondent's demurrer to complainant's bill of complaint.

19. The Court erred in affirming the decree of the trial court.

20. The Court erred in failing to specifically hold that a court of equity has jurisdiction in the above-entitled cause.

21. The Court erred in holding that a court of equity is without jurisdiction in the above-entitled cause.

22. The Court erred in holding that it had no jurisdiction over the above-entitled cause.

WHEREFORE, and in order that the foregoing assignments of error may be and appear of record, the said appellant herein files and presents the same to the said Court and prays that such disposition may be made thereof as may be in accordance with law, and said appellant herein prays a reversal of the above-mentioned [75] decree heretofore made and entered by said Supreme Court of the Territory of Hawaii and hereby appealed from.

Dated at Honolulu, T. H., this 25th day of February, A. D. 1931.

ISOJIRO KITAGAWA.

By CARL S. CARLSMITH,
And C. W. CARLSMITH,

His Attorneys.

The service of a copy of the within assignments of errors this day admitted, dated March 17, 1931.

E. R. MCGHEE,
Attorney for Appellees. [76]

[Endorsed]: Filed March 17, 1931, at 3:00 P. M.
[77]

[Title of Court and Cause—No. 1974.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND.

Upon reading and filing the verified petition of the complainant-appellant, Isojiro Kitagawa, for an appeal to the United States Court of Appeals for the Ninth Circuit, and upon consideration of the assignment of errors presented and filed herein,—

IT IS ORDERED that said appeal from the final decree of this Court, entered herein on the 16th day of January, A. D. 1931, is hereby allowed, and that said petitioner is ordered to file with the Clerk of this court within thirty (30) days from the date hereof an approved bond in the sum of Five Hundred Dollars (\$500.00), conditioned that the complainant-appellant will prosecute said appeal to a final conclusion and effect and answer all damages and costs if complainant-appellant fails to make good his said plea on appeal.

Dated at Honolulu, T. H., this 17th day of March, 1931.

ANTONIO PERRY,

Chief Justice of the Supreme Court of the Territory of Hawaii. [78]

The service of a copy of the within order this day admitted, dated March 17, 1931.

E. R. McGHEE,

Attorney for Appellees. [79]

[Endorsed]: Filed March 17, 1931, at 3:00 o'clock P. M. [80]

[Title of Court and Cause—No. 1974.]

CITATION ON APPEAL.

To the United States Court of Appeals for the Ninth Circuit.

The United States of America,—ss.

The President of the United States of America, to Oliver T. Shipman, and County of Hawaii,
GREETING:

You and each of you are hereby cited and admonished to be and appear in the United States Court of Appeals for the Ninth Circuit, at San Francisco, State of California, within thirty (30) days from the date of this citation, pursuant to an appeal allowed by the Supreme Court of the Territory of Hawaii filed in the Clerk's office of said court on the 17th day of March, 1931, in the cause wherein Isojiro Kitagawa is complainant and you are respond-

ents, to show cause, if any there be, why the decision and decree rendered against the said complainant-appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be [81] done to the party in that behalf.

WITNESS the hand and seal of the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States of America this 17th day of March, in the year of our Lord one thousand nine hundred and thirty-one.

ANTONIO PERRY,

Chief Justice of the Supreme Court of the Territory of Hawaii.

[Seal]

Attest: J. A. THOMPSON,

Clerk of the Supreme Court of the Territory of Hawaii.

The service of a copy of the within citation on appeal this day admitted dated March 17, 1931.

E. R. MCGHEE,

Attorney for Appellees. [82]

[Endorsed]: Filed March 17, 1931, at 3:00 o'clock P. M. [83]

[Title of Court and Cause—No. 1974.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

To James A. Thompson, Esq., Clerk of the Supreme Court of the Territory of Hawaii:

You will please prepare and certify a transcript

of record in the above-entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the appeal allowed by the above-entitled court, and include in such transcript the following pleadings and proceedings, as follows:

1. Original bill of complaint.
2. Demurrer.
3. Ruling on respondent's demurrer. Dated May 10, 1930.
4. Motion to amend bill of complaint. [84]
5. Amended bill of complaint.
6. Demurrer to amended bill of complaint.
7. Ruling on demurrer to amended bill. Dated July 31, 1930.
8. Final decree. Dated August 4, 1930.
9. Notice of appeal.
10. Clerk's minutes.
11. Bond on appeal.
12. Opinion of the Supreme Court of the Territory of Hawaii filed December 30, 1930.
13. Decree entered January 16, 1931.
14. Petition for appeal.
15. Assignment of errors.
16. Order allowing appeal.
17. Bond on appeal.
18. Citation on appeal.
19. All orders allowing time to docket cause.
20. This praecipe.

You will annex and transmit with the record the original petition for appeal, assignment of errors, order allowing appeal and citation, and also your certificate under the seal in compliance with Rule 14

of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Honolulu, T. H., this 20th day of January, 1931.

CARL S. CARLSMITH and
C. W. CARLSMITH,
Attorneys for Isojiro Kitagawa.

The service of a copy of the within praecipe filed March 17, 1931.

E. R. MCGHEE,
Attorney for Appellees. [85]

[Endorsed]: Filed April 6, 1931, at 3:40 o'clock P. M. [86]

[Title of Court and Cause—No. 1974.]

ORDER ENLARGING TIME TO AND INCLUDING MAY 16, 1931, TO PREPARE AND TRANSMIT RECORD ON APPEAL AND DOCKET CAUSE.

Upon the application of the above-named appellant, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS HEREBY ORDERED that the above-named appellant and the Clerk of this court, be and they are hereby allowed until and including the 16th day of May, 1931, within which to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, the record in the above-entitled cause

on appeal in this court, together with the assignment of errors and all other papers required as part of said record. [87]

Dated at Honolulu, T. H., this 4 day of April, 1931.

[Seal] ANTONIO PERRY,
Chief Justice of the Supreme Court, Territory of
Hawaii.

Approved:

E. R. MCGHEE,
Attorneys for Appellees.
CARL S. CARLSMITH and
C. W. CARLSMITH,
By H. L. WRENN,
Attorneys for Appellant. [88]

[Endorsed]: Filed April 9, 1931, at 1:30 P. M.
[89]

[Title of Court and Cause—No. 1974.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That Isojiro Kitagawa, as principal, and the Hawaiian Insurance and Guaranty Company, Limited, a corporation, as surety, are held and firmly bound unto Oliver T. Shipman, Treasurer of the County of Hawaii, his successors in office, and the County of Hawaii, in the penal sum of Five Hundred Dollars (\$500.00), for the payment of which, well and truly to be made to the said Oliver T. Shipman, Treasurer of the County of

Hawaii, his successors in office, and the County of Hawaii, do bind themselves and their respective successors firmly by these presents.

THE CONDITION of the foregoing obligations is that on the 17th day of March, A. D. 1931, the above-bounden principal appealed to the United States Circuit Court of Appeals for the Ninth Circuit from that certain decree made and entered in the above-entitled court and cause on the 16th day of January, A. D. 1931, by the [90] Supreme Court of the Territory of Hawaii.

NOW, THEREFORE, if said principal shall prosecute said appeal to effect and answer all damages and costs if he fails to sustain said appeal, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF the said Isojiro Kitagawa, as principal, and the Hawaiian Insurance and Guaranty Company, Limited, as surety, have hereunto set their hands this 8th day of April, 1931.

ISOJIRO KITAGAWA.

By CARL S. CARLSMITH,

His Attorney,

Principal.

HAWAIIAN INSURANCE AND GUAR-
ANTY COMPANY, LIMITED.

[Seal]

By GWYNN I. MATTHIAS,

Its Treasurer,

Surety.

The foregoing bond is approved.

[Seal]

A. PERRY,

Chief Justice of the Supreme Court of the Territory of Hawaii. [91]

[Title of Court and Cause—No. 1974.]

CERTIFICATE OF THE CLERK OF THE SUPREME COURT OF THE TERRITORY OF HAWAII TO THE TRANSCRIPT OF RECORD ON APPEAL.

Territory of Hawaii,
City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, by virtue of the petition for appeal, filed March 17, 1931, by the complainant, the original whereof is attached to the foregoing transcript of record, being pages 66 to 68, both inclusive, and in pursuance to the praecipe for transcript of record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, filed March 17, 1931, on behalf of complainant-appellant, to me directed, a copy whereof is attached to the foregoing transcript of record, being pages 83 to 85, both inclusive, DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit, the foregoing transcript of record, being pages 1 to 65, both inclusive, and pages 89 to 91, both inclusive, AND I CERTIFY THE SAME to be full, true and correct copies of the pleadings, record, entries, minutes,

decisions opinion and final decree, which are now on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in the cause entitled "Isojiro Kitagawa, Complainant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, Respondents," Number 1974.

I DO FURTHER CERTIFY that the original assignment of errors, dated March 17, 1931, being pages 69 to 76, both inclusive, the original order allowing appeal and fixing amount of bond, dated March 17, 1931, being pages 77 to 79, both inclusive, the original citation on appeal, filed March 17, 1931, being pages 80 to 82, both inclusive, and the original order enlarging time to and including May 16, 1931, to prepare and transmit record on appeal and docket cause, filed April 6, 1931, being pages 86 to 88, both inclusive, are attached hereto and herewith returned. [92]

I LASTLY CERTIFY that the total cost of the foregoing transcript of record is \$47.75, which amount has been paid by Carl S. Carlsmith, Esq., attorney for complainant-appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 23d day of April, A. D. 1931.

[Seal]

JAMES A. THOMPSON,

Clerk of the Supreme Court of the Territory of Hawaii. [93]

[Endorsed]: No. 6454. United States Circuit Court of Appeals for the Ninth Circuit. Isojiro Kitagawa, Appellant, vs. Oliver T. Shipman, Treasurer of the County of Hawaii, and County of Hawaii, Appellees. Transcript of Record. Upon Appeal from the Supreme Court of the Territory of Hawaii.

Filed May 1, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.